THE HON'BLE DR. JUSTICE G. YETHIRAJULU

W.P.No.5219 of 1988

Dated this 12th day of September, 2006

Between:

M.V. Venkateshwar Rao .... Petitioner

and

Electronics Corporation of India Ltd.,
and another .... Respondents

THE HON'BLE DR. JUSTICE G. YETHIRAJULU

W.P.No.5219 of 1988

ORDER:

The petitioner filed this Writ Petition under Article 226 of the Constitution of India praying this Court to issue a writ of Mandamus directing the respondents corporation to promote him as Assistant w.e.f 1986-87 with all consequential benefits.

2. The averments of the petition mentioned in the affidavit are briefly as follows:

The petitioner was appointed as an LDC in the respondents corporation in November, 1973. He was promoted as UDC in 1976. He is entitled for further promotion as Assistant. He became eligible to be promoted as an Assistant in the year 1982. He appeared for the test conducted by the Departmental Promotion Committee and he was successful in the test. But, for the reasons best known to the respondents corporation, he was not promoted for so many years including the promotions of August, 1987. The petitioner made several representations, but he did not receive any communication. He reliably learnt that despite his good performance, he was not promoted on the ground that his Confidential Reports were not upto mark and they were on lower side. When he made a representation to the second respondent for promotion, the second respondent made a recommendation favourably to consider his case for promotion through

the order dated 04-05-1987, but no action was taken by the Corporation. No adverse remarks have been communicated to the petitioner. He came to know that he was dropped for promotion on many occasions due to unauthorized absence beyond reasonable account. It is true that he remained absent from duty in the year 1983-84 for quite some time due to his serious illness, but it is not unauthorized absence. Disciplinary proceedings were initiated against him for unauthorized absence and the punishment of censure was imposed for the year 1983 and his increments were also postponed including the promotion. The disciplinary proceedings stood terminated prior to February, 1987 and no enquiry was pending against him. He appeared for the written test and oral interview before the D.P.C. for the series 1986-87, therefore, it is obligatory on the part of the respondents corporation to consider the case of the petitioner for promotion purely on merit basing his performance in 1986-87 series. The non-granting of the promotion would amount to continuous punishment, therefore, the petitioner sought for the extraordinary relief of Mandamus as indicated above.

3. The respondents filed a counter resisting the petition with the following averments in brief:

Though there is no dispute that the petitioner worked for more than 5 years as UDC to get eligible to be considered for promotion to the post of Assistant in 1981-82 series, his promotion is subject to his suitability and not automatic. To get eligibility, the petitioner has to secure minimum qualifying marks in the written test, oral interview, confidential reports ratings and in aggregate 60 out of 100 marks under the three categories. During the promotion series of 1981-82 to 1986-87, the petitioner did not get the minimum qualifying marks in more than one series and hence he was not promoted. The petitioner was not promoted because he was not found suitable for the promotion. The petitioner was found guilty of unauthorized absence after due enquiry, but by taking a lenient view he was only left with “warned”.

Since there was no improvement in the attendance of the petitioner which was mostly unauthorized absence, he was given another charge sheet on 02-09-1986 covering the period from 27-12-1985 to 01-09-1986 for habitual irregular attendance without leave or authorization. An enquiry was conducted and the petitioner was awarded stoppage of one increment without cumulative effect treating the unauthorized absence as dies-non. The petitioner also secured very low marks in his confidential reports and it is known to him. As he did not secure the required qualifying marks in one or more attributes in any of the years, he was not found suitable for promotion. The previous punishment was not taken into consideration and there was no arbitrariness on the part of the respondents and it is only on account of the petitioner not getting the minimum marks in one discipline or the other. Since the respondents have not violated any statutory Rules, the writ of Mandamus cannot be issued and the petitioner has no right to get promotion and it is not his vested right. The respondents, therefore, requested to dismiss the petition.

4. The petitioner filed a reply affidavit stating that the Reporting Officer was prejudicial against him, therefore, he put less marks in the Confidential Reports. The Reporting Officer has not given any reasons for awarding poor rating. He does not have any adverse remarks in the Confidential Reports. There was no review of C.Rs, therefore, the ratings given in the C.Rs cannot be taken into consideration for the purpose of promotion. His Reviewing Officer favourable remarks have not been taken into consideration for the purpose of promotion. The D.P.C. ought to have taken into consideration his C.Rs as incomplete and that it ought to have insisted review of C.Rs by the Reviewing Officer before giving their recommendations. Without obtaining the remarks of the Reviewing Officer, the C.Rs ought not have been taken into consideration. There are so many incidents in the respondents corporation giving promotions to the candidates, who are having unauthorzed absence,

even though they are regularly absent and irregular, but in his case only, the promotion was denied on the above allegation, therefore, he requested to allow the writ petition.

5. The affidavit and the counter affidavit indicate that the petitioner conceded that he was absent from duty in the relevant periods. The respondents contended that it is unauthorized absence, whereas the petitioner contended that it is not authorized absence. The petitioner did not produce any material to show that for how much period he was absent and whether there were any orders to show that either the absence was regularized or that he was absent with due authorization. Enquiries were conducted and on one occasion, warning was given and on the second occasion, the punishment of stoppage of one increment without cumulative effect was imposed, therefore, it is a clear case of unauthorized absence for a considerable period.

6. Though the petitioner contended that the Officer, who made entries in the Confidential Reports, is prejudicial towards him, he did not indicate the circumstances under which the Officer got prejudice and mere allegation that the officer is prejudicial towards him is not sufficient without any proof.

7. The petitioner further contended that there was no review of ratings given by the concerned authority and the favourable remarks given by the Reviewing Authority was not taken into consideration by the concerned officer. But the petitioner could not produce any material to show that the report cannot be taken into consideration without review by the Reviewing Officer.

8. The petitioner further contended that some of the employees who were unauthorizedly absent for a considerable period like him were given promotion, but he was alone denied the promotion. The petitioner did not place any material under what circumstances he was discriminated from those employees and what was the comparative period between those employees and himself and even in any such

instance the petitioner cannot, as a matter of right, demand that despite his unauthorized absence, he should be considered for promotion. The Officers of the respondents corporation followed the Rules to consider the eligibility of the employees for giving promotion. As the petitioner fallen short of the required marks in all factors, he was denied promotion. The concerned Officer putting the marks depends upon the performance, the regularity, the sincerity and the conduct of the petitioner, therefore, the petitioner cannot question the discretion of the concerned officer unless there is material to show that the concerned officer exhibited bias towards him.

9. In **STATE BANK OF INDIA v. KASHINATH KHER** [1], the Supreme Court held that when bank fixed eligibility criteria exposure to a peculiar type of work and work experience in rural branches, many officers unable to get such exposure/experience not because of their fault but due to non-availability of posts. The management decided to promote them as and when they fulfill eligibility criteria while preserving their seniority. Held that the decision of the management is not reasonable.

It was further held that the object of writing Confidential Report is two fold, i.e., to give an opportunity to the officer to remove deficiencies and to inculcate discipline. Secondly, it seeks to serve improvement of quality and excellent and efficiency of public service. It was further observed that the Confidential Reports should be written by the superior officers and officer to competent to write the Confidential Report. There should be another higher officer in rank above the rank who has written Confidential Reports to review such reports. By taking into consideration the procedure followed by the State Bank of India, the Court held that the procedure followed by the bank is illegal, unfair and unjust.

10. But, in the present, there is no such dispute regarding the competency of the Controlling Officer to write the Confidential Reports. The petitioner did not point out any illegality in following the

procedure prescribed under the Rules. In the absence of such illegality, the action of the respondents corporation in denying the promotion to the petitioner is not arbitrary, therefore, there are no merits in the writ petition and it is liable to be dismissed.

11. In the result, the Writ Petition is dismissed. No costs.

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Dr. G.YETHIRAJULU, J

Date: -09-2006

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[1] AIR 1996 SC 1328